EDWARD P. GEORGE, JR. (Bar No. 30120)
TIMOTHY L. O'REILLY (Bar No. 150392)
EDWARD P. GEORGE, JR., INC.
5000 East Spring Street, Suite 430
Long Beach, California 90815-1275
Telephone: (562) 497-2900

Attorneys for Respondent,
Judge Kevin A. Ross

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE KEVIN A. ROSS, NO. 174	**ANSWER OF JUDGE KEVIN A. ROSS TO FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS**

COMES NOW, Respondent, Judge Kevin A. Ross, and answering the First Amended Notice of Formal Proceedings in the above-entitled inquiry, admits, denies and alleges as follows:

COUNT ONE – Conduct Toward Defendants

A. People vs. Leonore Carrillo – Case # 1CR10187, 1AL01464, 1CR10882

Respondent admits and alleges that on Thursday August 23, 2001, defendant Leonore Carrillo was in court with her attorney, alternate public defender Charlene Hartsfield. Deputy city attorney Ed Gautier was the prosecutor of record. Defendant Carrillo was in custody on three Proposition 36 cases. Previously, she had failed to appear after being sentenced and released from custody to restart her drug treatment program.

Defendant Carrillo was someone Respondent hoped could thrive by utilizing the resources available to her. She had three children taken from her by the Department of Children and Family Services because of her drug addiction and was

currently in her seventh month of pregnancy, still abusing heroin, alcohol and a CNS stimulant. She had been convicted of loitering and/or engaging in prostitution in prior cases and had twelve previous failures to appear. When Respondent first met Ms. Carrillo, he recalls that she was terribly underweight to be in her third trimester. Her eyes were sunken back, her hair appeared dirty and frizzed, and her clothes were disheveled. She did, however, have the support of her family, especially her father. He was the only person other than the attorneys, staff, defendant Carrillo and Respondent who was present in the courtroom.

Having attended the CJER classes on alcohol and other drugs, Respondent knew her situation demanded immediate attention and defendant Carrillo indicated she desperately wanted to get help. She also asserted that with her family's encouragement, this time she would make it to the Community Assessment Service Center (CASC) and return to court. Her father assured the court he would be responsible for bringing her back for future appearances and was taking his daughter to his home subsequent to her release from custody.

On August 23, 2001, the court told the defendant in her attorney's presence that not returning to court could result in substantial jail time. Respondent recommended to defendant Carrillo that a better option would be an in-custody program for pregnant mothers. She declined this option after Ms. Hartsfield, Mr. Gautier and Respondent fully discussed this program on the record. The court then released defendant Carrillo a second time after a previous failure to appear with a new return date of August 29, 2001. She was to report to CASC the following day on August 24, 2001 for her three cases. Later that afternoon, the defendant was released from the Twin Towers Jail Facility at approximately 4:30 p.m.

Defendant Carrillo never made it to the CASC, nor did she return to court on Wednesday August 29, 2001. The court issued a bench warrant for her non-appearance and revoked the defendant's O.R. status. Deputy city attorney Brian Bowers was the prosecutor of record. It was customary for Ms. Hartsfield to ask that warrants be held when she had spoken with her clients before their return appearance date. In this instance, that request was not made.

On August 30, 2001, the court handled a total of three Prop. 36 matters involving two defendants. Deputy city attorney Voltaire Lazaro was the prosecutor of record. Although court had concluded several hours prior, Respondent remained at work attending to various matters, including returning personal calls that had been left on the court's voicemail line. This is how Respondent discovered that defendant Carrillo had contacted the court directly. In her phone message, she sounded upset, apologizing for not being in court and requesting that someone return her call.

Since the court staff and the attorneys had already left for the day, Respondent retrieved the number defendant Carrillo left and phoned her sometime between 5:00 p.m. and 6:00 p.m. Respondent identified himself as Judge Ross and advised Ms. Carrillo to return to court immediately to deal with the three outstanding bench warrants. There was no discussion whatsoever about the particulars of her case, whether she had kept her appointment with the CASC, or how the court planned on handling further proceedings. When defendant Carrillo attempted to discuss why she had not come back and her fears about the consequences of not returning, Respondent immediately interrupted her and advised her to just come in on Friday August 31, 2001. Once she appeared the next morning, Respondent told her the court would take it from there. Respondent also told her to take care of herself and the unborn child.

Ms. Carrillo expressed relief and asked whether Respondent wanted to speak to her father who would be escorting her. Respondent told her that would not be necessary and that he would see her tomorrow in court. The entire conversation

lasted under two minutes. Respondent then hung up, deleting the message afterwards because all indicators suggested the defendant would be present the next day.

On Friday August 31, 2001, the court was anticipating defendant Carrillo's presence. That morning, Respondent had the court clerk pull the file. City Attorney Brian Bowers was the prosecutor of record. From the bench, Respondent told alternate public defender Ms. Hartsfield that defendant Carrillo had left a message on the court's phone and he had returned her call in an effort to have her come in and deal with her cases. Ms. Hartsfield indicated she had also spoken with her client on Thursday August 30, 2001, was aware that the defendant had communicated with the court, and expressed how appreciative Ms. Carrillo was that Respondent personally contacted her. Ms. Hartsfield stated that her client sounded upbeat and positive and was very optimistic about her situation.

Ms. Carrillo, however, never reappeared in court on her own volition. Because the bench warrants had already issued, nothing additional was noted or transcribed that day on the record. Respondent, however, jotted down in the court's minute order for future reference what had actually occurred concerning the telephone call and Ms. Carrillo's actions. After adjourning that day, Respondent had no further contact with the defendant.

Respondent specifically denies that this was an improper ex parte communication and alleges that said conversation was an exception to an ex parte communication, pursuant to Code of Judicial Ethics, canon 3B(7)(d)(i)(ii).

Respondent specifically denies that his alleged conduct violated the Code of Judicial Ethics, canons 1, 2A, and 3B(7), was willful misconduct in office, was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or was improper conduct within the meaning of the California Constitution, Article VI, section 18(d).

B. <u>People vs. Wilfred Aka – Case # 1CR01361</u>

Respondent admits and alleges that defendant Wilfred Aka first appeared before Respondent on Thursday, September 26, 2002, having been placed on informal city attorney diversion for one year for allegedly violating six counts of the Los Angeles Municipal Code. Electing to represent himself in pro per, Defendant Aka had made previous appearances without an attorney. The court file reflected that time waivers had been taken after an initial advisement of rights and a reading of the charges. Although the matter was on the docket for a status report, the calendar indicated it was a new arraignment. After inquiring whether the arraignment tape had been played and receiving an affirmative reply from the clerk, Respondent began reviewing the file.

The alleged incident occurred August 5, 2001. After a year, the city attorney was still displeased over the lack of progress defendant Aka had made regarding securing a property other then his primary residence to conduct religious worship. Previous discussions with the city attorney had been ongoing, which told Respondent that past bench officers had conferred with the prosecutor and Mr. Aka directly in an effort to resolve the case. Respondent, however, had no prior involvement with this case. Respondent was merely filling in for Commissioner Nancy Gast in Division 82 that day.

Although prosecutors were now intimating that only a trial would resolve this matter, it was apparent neither side actually wanted that to occur. There were approximately twenty to thirty of the defendant's neighbors present, which added a certain dynamic to the proceedings because they did not want the church services to continue. The court attempted to limit conversation and advise Mr. Aka to discuss this situation further with the city attorney and perhaps a privately retained legal representative.

The purpose of subsequent questioning was to determine whether the court should impose as a further condition of O.R. release that no future church services take place at the home. Respondent had reservations over imposing this condition because instinctually, it seemed inappropriate. After sensing that there may be

credibility issues with Mr. Aka, the court began limiting his conversation and again recommending that the defendant get a lawyer. At this point, Mr. Aka agreed.

Both the audio and written transcript of the proceedings reflects that Respondent's temperament and disposition were not unreasonable. Respondent referred to the defendant as sir and answered all the questions posed by him. Mr. Aka was given ample opportunity to speak even though there was a full calendar of cases that needed to be adjudicated, as well as the pending matters in Respondent's own courtroom.

Respondent was patient, dignified and courteous to the defendant at all times. Respondent enumerated to Mr. Aka several reasons why he should be motivated to work something out, and indicated to both parties that the court did not feel this was being resolved properly. Respondent then continued the case per the predetermined three-week pretrial date. At the Central Arraignment Court (CAC), all non-custody cases are set twenty-one days from the date of arraignment. Given that defendant Aka had previously waived time for one year and there were financial concerns expressed, the court gave the defendant an additional week to retain a lawyer. That was the extent of Respondent's involvement in this case.

Respondent specifically denies that he abandoned his judicial role, became embroiled, and disregarded defendant's right to counsel.

Respondent specifically denies that his alleged conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), and 3B(8), was willful misconduct in office, was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or was improper conduct within the meaning of the California Constitution, Article VI, section 18(d).

C. <u>People vs. Hector Salcido – Case # 1CR09828, 1SF05342, 2CR12229</u>

Respondent admits and alleges that on September 27, 2002 defendant Hector Salcido entered into a not guilty plea while in custody on a new arrest. He also denied probation violations in two other matters. Mr. Salcido's cases were initially

set for pre-trial and probation violation hearings at the Criminal Justice Center (CJC). Deputy public defender Michael Waldinger, however, requested that the court revisit the issue of bail on September 30, 2002. Mr. Waldinger was also interested in knowing what Respondent's indicated sentence would be should the defendant choose to plead open to the court as opposed to accepting the city attorney's proposed disposition.

Respondent agreed to set the case for a bail review and possible disposition on September 30, 2002. The prosecution was prepared to submit on the internal probation violations but wanted sixty days custody time for the two external violations. They also wanted substantial jail time on the new offense (Case # 2CR12229). With his custody time running consecutively, defendant Salcido was looking at a minimum of 180 days in jail.

Instead, Mr. Salcido was given an opportunity to deal with his drug problem. The people's request for thirty days custody time on each probation violation was denied, over their objection. The court imposed no additional time in custody, deleted Cal Trans, added mandatory 12-step meetings, domestic violence counseling and other terms and conditions. Mr. Salcido had already spent ninety days in custody for previous probation violations in the past. Mr. Salcido was given credit for time served on his September 2002 arrest and his failure to appear in October 2001.

The court gave Mr. Salcido this sentence because Respondent was persuaded by the defendant's written plea and his determination to regain control over his life for the sake of his marriage and family. Respondent specifically told defendant Salcido to return to court on October 18, 2002, or there would be serious consequences. Deputy public defender Lisa Gordon also explained the severity of the situation to her client. This was her first appearance on behalf of Mr. Salcido and the second attorney who represented him in court. The matters were then continued for progress report on October 18, 2002.

The defendant failed to return to court on October 18, 2002, for his scheduled progress report. Attorney Gordon was also absent that day. Another public defender

asked that the bench warrants be issued and held for thirty days. This was now the third attorney representing Mr. Salcido. Respondent stated that Mr. Salcido needed to be in court no later than Monday October 21, 2002 or the bench warrants being held from October 18, 2002 would issue. At 10:45 a.m. on October 21, 2002, Attorney Gordon was present indicating that she had not had any contact with Mr. Salcido, but that a woman related to the defendant had contacted her office asking that the matter be continued. Defendant Salcido's probation status was revoked at that time and bail was set on the three cases for his failure to appear.

On Wednesday October 23, 2002, the defendant was returned to court, having been arrested on the bench warrants issued for his failure to appear on October 21, 2002. Deputy public defender Levik Yarian requested that defendant Salcido's cases be called, informing the court that he had not actually spoken with Mr. Salcido but that another colleague in possession of the defendant's files was prepared to do just that. Deputy public defender Gordon was again not present.

This was the fourth public defender appearing before the court representing Mr. Salcido. Given the lengthy exchange Ms. Gordon and Respondent had with Mr. Salcido about his cases and the fact that the attorneys in court were relatively new to the practice of law, Respondent continued the Salcido matters until October 29, 2002 when the court anticipated attorney Gordon would be prepared to go forward on the formal probation violation hearing.

On October 29, 2002, the court gave Ms. Gordon ample opportunity to state and restate her position during the defendant's formal hearing. For example, Ms. Gordon kept insisting that the reason Mr. Salcido was not present on October 18, 2002, was because he was hospitalized from October 15, 2002 through October 19, 2002, after checking himself into a treatment facility at the California Dream Center. Defendant Salcido later admitted during sentencing on October 29, 2002 that the California Dream Center was actually a church, not a treatment facility.

After the court warned attorney Gordon about her disrespectful disposition, she became belligerent. She insisted that she was not being allowed to make a record

despite the extended amount of time she had previously exhausted on the case. In an act of defiance, she continued talking after the court instructed her three times to conclude. When she refused, the court concluded that attorney Gordon was being intentionally disruptive and instructed the bailiff to escort counsel outside so she could cool down.

The court then picked up where it left off with deputy public defender Michael Berry who had been present throughout Mr. Salcido's formal probation violation hearing. Mr. Berry had stood in for Ms. Gordon on cases when his colleague was interviewing another client or simply was absent or not present when a case was called. Mr. Berry was not new to the practice of law. He had worked in the private sector for a few years prior to joining the public defender's office. Taking these factors into consideration, Respondent felt attorney Berry could effectively and competently continue with the sentencing the court had undertaken before attorney Gordon was asked to leave.

Defendant Salcido was told he would serve ninety days in custody on the 1CR09828 case for his failure to return to court on October 18, 2002, and that his probation would be reinstated. On his second matter, probation would remain in full force and effect with the same terms and conditions as before. While processing the third matter, the court's concern that Mr. Salcido was pathological in his misstatements and misrepresentations intensified. It was becoming apparent that the defendant's problems went far beyond what the court could address. At that moment, Respondent felt Mr. Salcido was being put in a situation that would prove detrimental to him.

Questioning the likelihood of defendant Salcido's success on probation, the court commented to public defender Berry that the defendant was being set up for failure. Respondent had a discussion off the record with the attorneys, then discontinued sentencing on the remaining case and trailed all Mr. Salcido's matters until the afternoon for further review and discussion. This also provided the court with an opportunity to step back and assess the situation with Ms. Gordon.

While in chambers that afternoon, the court offered apologies to Ms. Gordon for upsetting her. Respondent also told counsel that after a year of dealing with tantrums and hysterics, however, enough was enough. She acknowledged that the court's position in her cases had become more reasonable over time and she understood that Respondent was trying to change the negative lifestyles that caused these defendants to be in the criminal justice system. Furthermore, Ms. Gordon stated that in many instances she found herself agreeing with the court's assessments, but this case was different. Ms. Gordon felt she needed to put her reputation on the line for Mr. Salcido because she honestly believed he was telling the truth and was doing everything asked of him to get his life back on track.

Respondent complied with attorney Gordon's request to put over the formal probation violation hearing scheduled for October 29, 2002 until October 30, 2002. All previous sentences were stricken, probation remained revoked, and bail was set on each of the three matters. At the request of attorney Gordon, that hearing was continued to the following week, on November 4, 2002. The bail was held to stand and defendant Salcido's probation status remained the same. At attorney Gordon's insistence, the formal hearing was then trailed until the next day when it was finally adjudicated. On November 5, 2002, defendant Salcido admitted to the violation for his failure to return to court on October 18, 2002.

Through all her persistence, Ms. Gordon's efforts produced no additional evidence justifying her client's nonappearance on October 21, 2002, other than his attendance sheet for the domestic violence classes, and arrest information from the morning of October 23, 2002. Because of the time of day, Ms. Gordon felt this proved her client was making an effort to come to court before being stopped and detained by law enforcement. Despite having more than ample opportunity to conduct a formal probation violation hearing, no supplemental physical evidence, witnesses, or other indicia was proffered on November 5, 2002 to corroborate attorney Gordon's position that Mr. Salcido was in compliance with the court's specific instructions to return to court October 18, 2002.

The court stayed a substantial amount of custody time, including the 90 days custody time initially imposed on October 29, 2002. The defendant was given one last opportunity to comply with the court's orders. Respondent explained to Ms. Gordon that if defendant Salcido did not comply in every respect, he would be facing a maximum sentence without probation in each of the three cases. Ms. Gordon felt that was too harsh because it was premised on her client's sentence being immediately imposed if any violations arose. She nevertheless went along with that disposition, indicating to Mr. Salcido that the court's alternative sentence of 180 days in custody and a deletion of certain terms and conditions should be accepted. That was what the defendant would have received when he first appeared before Respondent on September 27, 2002. This was also what the city attorney felt should have been initially imposed. Mr. Salcido declined that offer, insisting that if he were released, he would remain in full compliance.

Mr. Salcido was ordered to return on November 25, 2002 for more twelve-step meetings that would help him deal with his heroin addiction. He was released from custody at that time having served a total of fourteen actual days from October 23, 2002 until November 5, 2002. On November 25, 2002, defendant Salcido did return to court and was in full compliance with the terms and conditions of his probation on all three cases. Deputy public defender Steven Krinsky was the attorney of record, the fifth public defender who appeared before the court on behalf of Mr. Salcido. Including Mr. Berry, there were a total of six deputy public defenders who had handled this case at one time or another.

Fourteen days later on December 9, 2002, however, Mr. Salcido was back in court for a new offense against his wife, Desiree Perdue. He had allegedly violated a court order as well as the terms of probation on his three prior cases. With Ms. Perdue having previously filed six police reports against the defendant, attorney Gordon felt it was in her client's best interest to plead not guilty and have all his cases transferred to Division 46 for pretrial and hearings on the probation matters. Ms. Gordon submitted on the issue of bail. Mr. Salcido's four cases were sent to

Division 46 of the Criminal Justice Center. That was Respondent's last contact with the matter.

On December 23, 2002, defendant Salcido entered into a plea disposition whereby Judge Michael Kanner sentenced him to one year in the county jail and terminated probation on the older cases. Respondent was disappointed, because like Ms. Gordon, Respondent felt that Mr. Salcido was really trying to conquer his addiction problem.

Respondent specifically denies that he imposed sentence without affording defendant due process and interfered with defendant's right to counsel.

Respondent specifically denies that his alleged conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), 3B(7), and 3B(8), was willful misconduct in office, was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or was improper conduct within the meaning of the California Constitution, Article VI, section 18(d).

D. <u>City of Los Angeles v. Debra Fuentes – Case # 2466589 and 2025750</u>

Respondent admits and alleges that he committed judicial error in adding a code violation to a defendant's case (V.C. 16030(a)), and remanding someone who had already been in custody, had posted bail, and was released on a promise to appear on all future proceedings.

Defendant Debra Fuentes returned to court on Monday, April 21, 2003, seven years after two bench warrants involving traffic violations had been issued. She was adamant that the tickets were not hers and that someone was using her identity. To give her the benefit of the doubt, the court had the defendant complete two Wrong Defendant Declarations, one for each case.

After the defendant completed the declaration form, Respondent was unconvinced that the person before him was not the same person who was stopped on May 17, 1995 in citation number 2025750. That person signed a written promise to appear on or before July 3, 1995. When the defendant neglected to come to court, a

bench warrant issued and a charge of 40508 VC, failure to appear was added. The violation involved a minor traveling in the vehicle without wearing a seatbelt.

Debra M. Fuentes was the name that appeared with an address of 111 E. Avenue 36, Los Angeles, California 90031. The California driver's license number listed was C4208578. The person's date of birth was April 25, 1965. The defendant was described as a female Hispanic with black hair and brown eyes. Her height was listed at 5'4 and her weight 250 pounds. The car was a 1981 Datsun B210, two-door, brown in color. The license plate number was 1CUA836. The vicinity of the arrest was Avenue 28 at Figueroa Street in the city and county of Los Angeles.

Upon examining the declarations, the court noticed a number of similarities. The violation occurred within close proximity of where the defendant lived. Defendant Fuentes had the same date of birth, height and weight. She was a female Hispanic with brown eyes. The only difference eight years later was the hair color, which was now brown, and the fact that the defendant referred to herself as Debbie, not Debra. The signatures were identical, particularly how the d's, b's, f' s and t's were written. The suspended driver's license presented also had the same number, C4208578.

For the above reasons, the court concluded that this may be her case and would not dismiss the matter. The bailiff was instructed not to return the license because of its current suspension status. When defendant Fuentes was asked how she wished to proceed, she kept insisting she was innocent, that the court was wrong, and someone unbeknownst to her was receiving tickets and using her identity.

Next, Respondent reviewed citation number 2466589. This incident allegedly occurred February 27, 1996. The name Debbie Marie Fuentes appeared with the same 1981 Datsun B-210, two-door vehicle with license plate number 1CUA836, as the 1995 case. In the previous matter, the person was referred to as Debra, not Debbie, and the color of the vehicle was not described as maroon as it was here.

The violation, however, was the same -- allowing a minor to travel in a vehicle without wearing a seatbelt. In addition, the driver also failed to produce a

valid driver's license upon request. The defendant signed a written promise to appear on April 12, 1996. A bench warrant was issued and a 40508 VC failure to appear count was added to her citation as a result. The registered owner of the vehicle was Mary Fuentes at the same address of the defendant, 115½ East Avenue 36, Los Angeles, California 90031.

At the time, Respondent does not recall taking note of the fact that the address on the 1995 case was 111 East Avenue 36, not 115½. Upon closer examination, it also appears that the height and weight of the defendant was different. While the month and day of birth are the same, the year written was 1967, not 1965. Moreover, the driver's license number given was X9489366, not C4208578. Other factors such as the registered owner having the same last name on the same car, the similar name and signature, and the vicinity of the arrest (Pasadena Avenue and Figueroa Street in the city and county of Los Angeles is in close proximity to where the defendant resided) all indicated that these cases would not be resolved without defendant Fuentes pleading guilty, or not guilty and proceeding to trial.

When the court indicated its position, Ms. Fuentes continued to argue her case. She was relentless in her demands to have the matters dismissed. At this point, defendant Fuentes showed the court, through the bailiff, what appeared to be fraudulent insurance documents. She felt this information aided and relieved her of any responsibility for the two matters. This is when the court's focus shifted away from the cases at hand to the issue of defendant presenting false insurance information.

The court advised Ms. Fuentes that it did not believe she was telling the truth, returned her documents to her, entered a not guilty plea on her behalf, added a misdemeanor Vehicle Code section of 16030(A), submitting false insurance documents to a police officer or court clerk, exonerated the existing bail and set new bail amounts.

Approximately seventy-five to one hundred and fifty cases a day are heard in Division 64. Because of the sheer volume, sometimes people must wait outside to

ensure seating for those who actually have matters on calendar. Standing alone, Respondent told defendant Fuentes that she would be required to post bail. She was then wrongly remanded into custody on the court's order. Respondent was advised later that day that a teenage minor, age 14, had accompanied Ms. Fuentes to court and the court's actions resulted in a patrol car having to transport the minor home.

The following day, Respondent began having doubts about how the Fuentes case was handled. Respondent questioned whether counts should have been added and whether the defendant should have been remanded into custody. It was actually another case that triggered Respondent's concerns. There, the scenario was slightly different yet Respondent didn't adjudicate it the same way. At that point, Respondent asked the court clerk, Mary Wechter, to retrieve Ms. Fuentes' cases. Respondent reviewed the matters that afternoon, and confirmed that judicial error had in fact been committed.

Respondent's first reaction was to notify Ms. Wechter, and advise her that the problem needed to be corrected. Respondent was informed that the case was calendared for May 21, 2003 in Commissioner Michael Levanas' court. Respondent told Ms. Wechter to contact that court, advise them of his judicial error and have the matters advanced to Wednesday, April 23, 2003 for dismissal and an exoneration of bail. Respondent assumed Ms. Fuentes had already been cited and released that same day, April 21, 2003, because of the minimal bail amount and the lack of severity of the charges. Ms. Wechter determined that the defendant was released from custody April 23, 2003, but only after posting additional bail. The matter calendared in Commissioner Levanas' court that day was not heard because the defendant had just been released and would not have had any prior knowledge of the court's efforts to expedite the matter.

Respondent next contacted Site Judge David Sotelo and relayed to him what happened. Respondent told him Ms. Fuentes' cases should be dismissed in the interest of justice. Judge Sotelo agreed that the matters should be dismissed and that he would be speaking to supervising judges about the incident.

The cases were initially transferred to the Master Calendar court on April 21, 2003, because Respondent felt the defendant needed legal counsel and public defenders were available in that division. The matters were put over until May 21, 2003. When Ms. Fuentes appeared in Division 61 on that day, her cases were dismissed in the interest of justice.

Respondent accepted complete and total responsibility then and now for committing judicial error. While several factors contributed to Respondent not being more attentive with these cases, none excuse Respondent's misapplication of the law in this instance. The outcome should have been completely different. No additional charge or bail should have been added. A not guilty plea should have been entered with a bail to stand order. At trial, a decision as to her guilt or innocence should have been determined. Respondent sincerely regrets the incident and has learned from this mistake.

Respondent specifically denies that his alleged judicial error was willful misconduct in office, or was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, within the meaning of the California Constitution, Article VI, section 18(d).

Respondent admits that his judicial error was improper conduct within the meaning of California Constitution, Article VI, section 18(b).

COUNT TWO – Absences from Court

A. <u>March 6, 2000</u>

Respondent admits and alleges that on March 6, 2000 Site Judge Eric Taylor, who is currently serving as president of the California Judges Association (CJA), contacted Respondent by phone about an appearance Respondent made on a radio program earlier that morning. Judge Taylor first relayed that there had been complaints Respondent was campaigning on behalf of then deputy district attorney Patricia Titus and others during court hours. Judge Taylor inquired whether Respondent wanted to memorialize the series of events in writing. Respondent

declined, stating that as a public official, he was discussing the impact Proposition 21, the Juvenile Justice Initiative, would have on citizens who would be voting on the measure March 7, 2000.

CJA was one of the main opponents of Prop 21 and other judges, particularly those assigned to juvenile courts, had been proactive and just as vociferous. A group of judges actually held a media press conference denouncing the measure and encouraging fellow bench officers who felt the same way to exhaust their resources to educate the public on the initiative's specifics. Because Respondent was interested in securing a juvenile assignment in the foreseeable future, Respondent felt being involved was appropriate in this instance. Additionally, Respondent had already written an article for Turning Point Magazine, appeared on KCAL Channel 9 Television, and lectured political science students at Southwest College about Prop 21. With the exception of the radio interview, these other activities where done during non-court hours.

Judge Taylor went on to say that some felt that speaking out against Proposition 21 while people were waiting in court was inappropriate. Respondent's response was that this criticism had less to do with the fact that he was across the street for approximately fifteen to twenty minutes conducting a radio interview for Proposition 21, and more to do with the fact that Respondent's appearance was one day before a contested judicial race between then Commissioner Deborah Christian, who Judge Taylor and most of the other judges were supporting, and Deputy District Attorney Patricia Titus whom Respondent was supporting. Judge Titus ultimately won the judicial race and her name, along with several others, was mention as someone who had also come out against Prop 21.

Judge Taylor knew Respondent had been a guest several times before discussing community issues both as an attorney and as a judge. In fact, Judge Taylor, Judge Ferrell and Respondent had previously appeared on a Saturday morning program on KJLH. That appearance in 1999 led to a monthly, "Ask The Judges" segment being featured on the station. Two days prior on March 4, 2000,

Commissioner Christian had appeared on the radio station's "Ask The Judges" segment promoting the drug court she had initiated in the Inglewood Judicial District. Three months after Respondent's appearance, California Supreme Court Chief Justice Ronald George and then Presiding Judge Victor Chavez made a joint appearance on KJLH with Judge Taylor in July 2000. Judge Taylor was quoted as saying that appearing on this radio station is, "[A] terrific opportunity to reach out to a large segment of Los Angeles County's minority community and help build awareness of the judiciary".

When Judge Taylor asked Respondent to relay what happened that morning, Respondent indicated he entered the judges' underground parking structure at 8:40 a.m. to find Commissioner Ulyssus Burns trapped in the elevator. Commissioner Burns and Respondent were buddy courts and covered for each other whenever needed. The only other bench officer present was Judge Ferrell, who by then was contacting service personnel to resolve the problem. At that point, Respondent told Judge Ferrell that he was going across the street to do an interview about Proposition 21. Although Judge Ferrell was neither the site judge nor assistant site judge in 2000, the other bench officers had not arrived to the court yet. Respondent informed Judge Ferrell that afterwards he would be returning and by that time, the elevator situation would hopefully be resolved.

The radio interview began after 9:00 a.m. and lasted no more than fifteen to twenty minutes. Because the station was less than 500 feet from the courthouse and the segment was going to be brief, Respondent did not see the need to clear the event through Judge Taylor. The interview was actually scheduled to take place at 9:00 a.m. but the producers of the show were running behind schedule with another in-studio guest. Respondent called his clerk, Patsy Emery, before going on the air to advise her that he would be later than expected. Ms. Emery told Respondent how unfortunately she would not be able to listen, and that she heard about Commissioner Burns being stuck in the judge's elevator but that now it was working properly.

Once Respondent began speaking on the program, several listeners called in and joined the discussion, including students at Southwest College with whom Respondent had previously met. As he concluded speaking on the broadcast, Respondent thanked the hosts and stated that he needed to head back across the street to handle the court's morning calendar. One of the personalities, Cliff Winston, commented that he would not want to appear before Respondent. Respondent's reaction was something to the effect of, "Oh, I'm not that bad… well, maybe I would be with you." Laughter ensued with co-hosts Janine Hydell and Mark Keene, and that was it. Respondent then returned to his courtroom and began adjudicating cases sometime after 9:30 a.m.

Respondent rarely took the bench before 9:00 a.m. because the routine in Division 7 was well established at that point. The bailiff opened the doors at 8:30 a.m., and defendants would get checked in and seated. Respondent typically took the bench between 9:00 a.m. and 9:15 a.m., called the calendar, issued warrants, handled private attorney matters, and then recessed for 15-30 minutes to allow the lone public defender assigned to the court additional time to complete his interviews and work out dispositions with the prosecutors.

Instead of having to request the court take its daily recess after calling the calendar or asking for second call on most of his matters, assigned deputy public defender George Steele indicated that the extra time allowed him to speak to more clients. There were close to fifty matters calendared on March 6, 2000. Rather than a few cases being ready, Mr. Steele was now able to proceed with quite a few. In fact, calendared cases scheduled that morning and bench warrant walk-ins were all completed before Respondent recessed for lunch. The court was not engaged in a trial where jurors were unnecessarily delayed, and all private attorney cases were adjudicated in a timely manner without any complaints.

Thus, all Respondent's courtroom responsibilities were faithfully executed and performed on March 6, 2000 with minimal delay. Other than monthly judges meeting on Friday mornings that would go longer than anticipated, or

covering for another court, Respondent received no complaints while assigned in Inglewood that he was unavailable during court hours or that outside activities were being given priority over his official duties and obligations.

Respondent specifically denies that his alleged conduct violated the Code of Judicial Ethics, canons 1, 2A, 3A, 3B(8), 4A(2) and 4A(3), was willful misconduct in office, was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or was improper conduct within the meaning of the California Constitution, Article VI, section 18(d).

B. April 18, 2002

Judge Marion Johnson had been talking to Respondent for some time about the need for the next generation of minority lawyers and judges to be in leadership roles in various organizations. The California Association of Black Lawyers (CABL) was one of them. Judge Johnson was the organization's judicial advisor for some time and was looking for a replacement as he was contemplating retiring from the bench. He had decided Respondent would be that replacement.

Respondent admired Judge Johnson and considered him to be one of his judicial mentors. Judge Johnson was the only sitting judge who had supported Respondent's election bid and had administered the oath of office at Respondent's investiture service in 1999.

In March 2002, Judge Johnson solicited Respondent by phone to be a panelist for a conference sponsored by CABL. Judge Johnson informed Respondent that the event was being held in Palm Springs from April 18-21, 2002 and that he would get Respondent details about the weekend at a later date.

Respondent was not asked to simply sit on a panel Friday April 18, 2002. Judge Johnson encouraged Respondent to come early, meet the CABL officers and really immerse himself into all the conference activities. Judge Johnson wanted Respondent to join him on the golf course, dialogue with the other judicial advisor, and ultimately agree to replace him on the board.

When Judge Johnson told Respondent that he would have to pay for the trip himself, Respondent initially said no to the invitation. Respondent and his family had already planned to attend the California Judges Association (CJA) Midyear Conference the following week. Judge Johnson suggested that Respondent attend both, like him. Respondent told him that financially, that was not feasible. Judge Johnson then relayed to Respondent that other bench officers had served in leadership roles and it was time that newer, younger judges assume the responsibility. He urged Respondent to attend the CABL conference if Respondent had to choose because the organization was losing support and was in danger of ceasing to exist. In Judge Johnson's words, "Go to CJA'S event next year".

Respondent agreed to be on the CABL panel and completed a judicial time-off request form for April 18 & 19, 2002. That request was ultimately approved.

Shortly after turning in the form, Respondent was asked to be a panelist for the 2nd Annual Inner-City Economic Conference sponsored by Operation Hope. The summit was also on April 18, 2002 and Respondent's presence was requested for the day. Representing the judiciary, Respondent had attended the previous summit featuring United States Vice-President Al Gore in 2000 and was extremely impressed.

The 2002 summit involved various briefings and meetings, a luncheon featuring a White House official from the Bush administration, and an afternoon plenary session. Upon reviewing the CABL itinerary and realizing that the conference was not officially starting until later in the evening on April 18, 2002, Respondent agreed to delay his arrival in Palm Springs and serve on a panel at the economic summit.

Also during that same time period, Respondent had contacted Judge Charles Clay to congratulate him on his recent judicial appointment. After talking with him, Respondent thought it would be a good idea for Judge Clay to join him on KCET to talk about Governor Gray Davis' judicial appointments and what it is like to suddenly go from being a lawyer to a judge. It was scheduled to take place on

Tuesday April 16, 2002. That day, however, the producers asked if Respondent could do the interview on Thursday April 18, 2002. Respondent told them yes, pushed his travel time even further back, and did the interview with Judge Clay.

Respondent attended the economic summit, stayed until the end and then drove over to KCET to meet up with Judge Clay. Respondent taped the show, returned home, changed and then drove to Palm Springs. Respondent arrived late that evening.

On Tuesday April 23, 2002, Judge Clay was sent to the Central Arraignment Court for judicial training. Commissioner Kristi Lousteau was training Judge Clay that morning and escorted him to Respondent's court so Judge Clay could observe other matters and receive additional training. When Commissioner Lousteau made the introduction, Judge Clay and Respondent told her they already knew each other and had done a segment together on KCET the previous Thursday. This was the same day Commissioner Lousteau had signed off for Respondent to be in Palm Springs. Respondent was not trying to hide or conceal his whereabouts and didn't have a problem with explaining in writing why he delayed arriving in Palm Springs for the CABL Conference. It just seemed unnecessary to complete another request form for the exact same day.

In fact, Judge Clay and Respondent had a lengthy conversation about CABL and they talked about the challenge of being involved with these organizations while balancing a career and a young family. Judge Clay is also African-American. Respondent told Judge Clay that the conference turnout was disappointing and Respondent now understood exactly what Judge Johnson was trying to convey. Judge Clay and Respondent ended the day by calling a mutual friend who had been interested in a judicial appointment and encouraging that person to complete the application. Although Respondent ultimately decided not to become CABL'S judicial advisor, Judge Patricia Titus agreed to serve in that capacity.

Respondent attended both conferences, made the KCET appearance, and tried to be as accommodating and productive as possible. Respondent had no reason to

believe that his request would not have been approved to take off April 18, 2002. The email sent to Commissioner Lousteau the day before was done out of courtesy and was entitled "CABL Conference" only as a point of reference. When other bench officers were absent, Respondent was rarely told that Respondent needed to cover another court as well as his own. Since Respondent had brought up the issue, Respondent wanted to ensure that his colleagues would not be surprised to find they had to cover his court the following two days.

In the almost six years Respondent has been a judge, Respondent has only been denied a request to do community outreach work once. That was an event commemorating the first anniversary of the September 11, 2001 incident. Respondent was contacted regarding being away from the court for a few hours on September 12, 2002 and the denial was premised on there not being enough judicial coverage. Respondent told Judge Carol Rehm he would handle his own calendar, did exactly that, and still was able to participate in the morning event entitled, "Dialogues In Freedom".

There is an eight day limit on the number of days judges can take off for court absences involving continuing judicial education. There is no such limit for "court related" activities that also serve as a facet of our official duties and responsibilities. The term "court related" is specifically ambiguous to allow judges the flexibility to become involved in community outreach activities. Whether it's giving a high school commencement speech or speaking at an economic summit, Respondent has always been able to tailor his comments to reflect the importance of the courts as one of the three branches of government. The correlation between courts collecting various fees and communities struggling with unemployment, high crime and despair is something that needs to be continuously addressed. Partnerships between the courts, the private sector and the other governmental branches are critical to changing people's lives and ensuring that every individual has fair and equal access to justice.

With two years having lapsed, Respondent has yet to receive one request from any judge in a supervisory position to explain his purpose for attending the Inner-

City Economic Summit on April 18, 2002. Assuming arguendo that Respondent's presence was deemed outside the court's "approved activities", eight months and countless unused vacation days remained in the 2002 calendar year. It would not have been problematic for Respondent to have substituted a vacation day for the time used to attend two conferences at his own expense, and promote the diversity of the judicial branch of government on public television all in the same day.

Respondent specifically denies that his alleged conduct violated the Code of Judicial Ethics, canons 1, 2A, and 3C(1), was willful misconduct in office, was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or was improper conduct within the meaning of the California Constitution, Article VI, section 18(d).

COUNT THREE

Background

Respondent admits and alleges that in August 1999, the *Daily Journal* publication did a judicial profile on Respondent. In the article various aspects of Respondent's life and community ties were detailed. Subsequently, Respondent was contacted by *KCET*, a *PBS* television program covering Southern and Central California. The producers invited Respondent to appear on the show *Life & Times Tonight* to talk about his background and experiences on the bench. After conferring with other judges about appearing on the program, Respondent agreed and was interviewed on the program in September of that same year.

While at the station, Respondent met Val Zavala, director of Public Affairs and the show's co-host, and Al Jerome, president of *KCET*. That meeting led to a discussion about how *KCET* wanted to provide ongoing educational and substantive information to its viewers regarding legal matters. This was during a time when daytime television court shows were exploding in popularity and many felt these shows did not put the judiciary in the most positive light. Respondent was asked

whether he would be interested in being involved in this endeavor. Respondent was amenable, seeing this as an opportunity for the court to participate in a positive collaborative effort.

After contacting the Judicial Ethics Hotline in 1999, Respondent was advised that any future appearances on a regular basis would not appear to violate the Judicial Canons. It was public television as opposed to a private, for-profit station, it involved no compensation, and the goal was consistent with the court's charge of ensuring public confidence in the courts and the administration of justice. Because Respondent had previously been in radio and was a member of the American Federation of Television and Radio Artists (AFTRA), union rules prohibited Respondent from making any regular appearances on television or radio without compensation. The consensus was that if Respondent turned the monies over to the county' s general fund, however, this would fulfill all his obligations.

Since the early 1990s, there has been a national push for courts to increase citizen awareness through community involvement. In California, the state Judicial Council added public outreach as an official function of the courts in 1999. **Section 39** of the **California Standards of Judicial Administration** specifically defines the role the judiciary should and must play in state and local community affairs.

Having established that official duties include educating and informing the community about court procedures, policies and laws affecting them, Respondent believes the canons were not violated. Respondent made numerous appearances on KCET for three years and the experience was extremely positive. Several judges, lawyers, court personnel and professionals were invited on the show to discuss important legal issues. Three presiding judges were aware of Respondent's appearances, including former Presiding Judge Victor Chavez who was one of Respondent's first guests. Afterwards, Judge Chavez commented that he felt the court's involvement with a show like *Life & Times* was both important and relevant.

The Los Angeles Superior Court's Public Information Office actually sought Respondent's assistance in promoting programs and events such as the court's

Adoption Saturdays and Grand Jury service. Additionally, the media expertise Respondent acquired through working with *KCET* was utilized in the New Judges Orientation CD-Rom produced by the court' s Planning and Research division. The staff attorneys indicated that former Presiding Judge James Basque specifically requested that Respondent participate.

Some of the other judges and legal professionals who have appeared with Respondent include the following:

Judge Jacqueline Connor	Jury Innovations
Former Mental Health Supervising Judge Harold Shabo	Mental Health Issues
Juvenile Presiding Judge Michael Nash	Adoption Saturdays
Judge Teresa Sanchez-Gordon	Grand Jury Functions
Judge Charles Clay	Judicial Appointments
Judge Ana Maria Luna	Prop 36/ Drug Court
Commissioner Glenda Veasey	Family Law
Criminal Division Supervising Judge Dan Oki	Courthouse Security
Jury Director Gloria Gomez	1 day/1 trial jury service
Interpreter Services Director Greg Drapac	Use of Interpreters
Former State Bar President Karen Nobumoto	Rights/ Responsibilities when someone turns 18

Topics on the program have included: What To Do In Small Claims Court, Traffic Matters, New Laws, Prop. 21, Functions And Duties Of The Commission on Judicial Performance, Real Estate Law, Spanking Versus Disciplining Children, Important U.S. Supreme Court Decisions, and Cameras in the Courtroom.

Respondent is proud of all his outreach efforts and considers this involvement an integral part of Respondent official duties. For anyone to suggest otherwise is unfortunate. In fact, Respondent entire legal career has reflected his passion for the law and making a difference in the lives of others. Moreover, no one had complained

to Respondent that what he was doing was inappropriate and/or should be discontinued. The first complaint received was when Respondent was contacted by CJP. Afterwards, Respondent immediately contacted Val Zavala and Al Jerome and notified them that he wanted to hear from the Commission before making any further appearances on the show.

Initially, Respondent's role on the program was to interview other persons similar to his conversations with Presiding Judge Chavez and Jury Coordinator Gloria Gomez. Respondent was later asked to speak more based on the feedback the viewing audience was giving the producers of the show. Although Respondent did this frequently, the goal was always to introduce the public to as many people in the legal community as possible.

A. <u>January 15, 2001</u> – Juvenile Court

Admits and alleges that on this occasion, information regarding a petitioner and the particulars of the minor's case were mentioned to advance a general discussion about juvenile proceedings. This was Respondent's first week in this important assignment. Respondent was excited and looking forward to having the opportunity to turn the lives of these young people around. As an attorney, he toiled in juvenile court for 18 months and found the experience very rewarding. That was Respondent's mindset after being assigned to the Compton Court and the transcript from *Life & Times* clearly reflects that. The focus of the segment was to educate the public about this area of law and the different ways courts treat adults versus minors eighteen and under.

Respondent does not believe he violated the judicial canons in this instance for several reasons. The proceedings were private, the juvenile's name, address, and other personal information were not disclosed, and neither the attorney representing the minor not the prosecutor asked to have Respondent recused from the case because of any perceived bias or prejudice. Until Respondent received this notice of investigation, this was never brought to his attention.

B. **March 4, 2002** – Sexually Violent Predator Cases

Admits and alleges that the allegations here do not indicate that Respondent discussed the particular facts of the case on appeal. Respondent mentioned background information that included why the case was being so closely watched, why the civil detainee was so well known in the Bay Area, and why some felt the California Supreme Court appeared to have fast-tracked the case. Most of the segment was a previously shown interview with the defendant which Respondent had nothing to do with. His explanation of the law was not specific to any particulars of the cases Respondent was handling at that time. Respondent did discuss the California Supreme Court case in terms of what he believed the issues were. Respondent attempted to provide a balanced presentation of those issues.

C., D. **July 22, 2002 / August 15, 2002** – When Officers are Charged With Crimes

Admits and alleges that Respondent did not discuss the guilt or innocence of the defendants. Respondent did discuss issues the case raised, but did not use the police officer's name. The discussion was focused on what Respondent felt the community needed to be educated and kept abreast of. Respondent was neutral, objective, and spoke in general terms about various scenarios that could arise in an analogous situation, as well as what to possibly expect in the future.

In fact, Respondent deferred to attorney Bill Seki who was invited to the program to give perspective from both the prosecution and the defense's point of view. Respondent recited the various aspects of the law in cases involving officers, the presumption of innocence, and translated the legal terminology being used.

As to Respondent's comments on August 15, 2002, Respondent stated on the air that Respondent could not discuss the particulars of the case itself. Respondent had indicated this on other occasions as well. Respondent did define the words venue and jurisdiction. Respondent also explained the procedure when attorneys file 170.6 affidavits against sitting judges.

Respondent specifically denies that his alleged conduct as to Count Three, A, B, C, and D, violated the Code of Judicial Ethics, canons 1, 2A and 3B(9), was willful misconduct in office, was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or was improper conduct within the meaning of the California Constitution, Article VI, section 18(d).

COUNT FOUR – Appearance in Court Show Pilot

Respondent admits and alleges that in March 2002, Respondent was first contacted by Endemol USA to gauge interest in being featured in a "pilot" for a possible syndicated television court show. A phone number was listed along with the person's name and a request that Respondent please return the call.

Upon returning the call, the person who answered the phone immediately knew who Respondent was and acknowledged that his name had come up several times in their discussions. Respondent had not been previously aware of this project. Respondent went to Endemol's office, was given information about a television series being developed and how they were looking for legal professionals, preferably a judge, to appear in a "pilot" presentation.

Prior to being elected to the bench in 1998, Respondent worked as a deputy district attorney for eight years. Employed in media for four of those eight years, Respondent was a member of the American Federation of Television and Radio Artists (AFTRA) and was represented by a talent agency for his radio talk show, The Kevin Ross Show on KABC Radio. During this period Respondent regularly appeared on television, providing legal, political and social analysis on a variety of issues.

Respondent continued his involvement in various forms of media after becoming a judge. Respondent saw the media as a great tool to educate and inform the public on legal issues, as well as cast a more favorable spotlight on the judiciary. While Respondent understood that his participation would be different than it had previously been, he appeared on radio programs to talk about areas of law, joined the

Los Angeles Superior Court's media committee, wrote several law-related articles and spoke regularly at schools (high schools and community colleges), churches, and before various civic organizations. Respondent also served as master of ceremonies of a legal installation for the Los Angeles Black Women Lawyers Bar Association, and presided over moot court competitions sponsored by his alma mater, Southwestern University School of Law.

As a co-founder and President of The New Leaders, a non-profit organization comprised of young minority professionals interested in developing leadership skills through community involvement, Respondent helped orchestrate a trip to Washington D.C. for the group to meet with White House officials in September 1999. The meeting was held and included a private tour of the White House.

After the initial conversation with Endemol, Respondent had no further contact with company representatives until May, 2002. Around the same time a former colleague from the district attorney's office, Todd Rubenstein, phoned and suggested Respondent call Susan Haber, a talent agent looking to represent lawyers and judges with backgrounds or interests in media. Attorney Rubenstein was now working at an entertainment law firm and was aware of Respondent's previous activities. Respondent told Attorney Rubenstein that it was ironic that he had phoned because Respondent had just had a discussion with a company called Endemol about a court "pilot" being developed.

Respondent subsequently spoke with Ms. Haber and relayed that he had been approached about a possible "pilot" being developed by Endemol. At that time, an agreement to enter into an unofficial 90-day agency relationship with Ms. Haber was reached. It was during this period that Respondent was then later contacted and asked to engage in "role-playing". This was done in front of executives from Endemol and Tribune Entertainment who were deciding - amongst many - which individual would appear in the "pilot". This occurred on Saturday July 20, 2002.

Two to three days later, Ms. Haber notified Respondent that he had been selected to appear in the "pilot" for the show *Mobile Court*. All legal documents Respondent later received where turned over to Attorney Rubenstein for review.

Respondent received information from Endemol executives on Thursday July 25, 2002 regarding case scenarios that would be used for purposes of filming the "pilot". This filming occurred Saturday July 27, and Sunday July 28, 2002. The disputes in the "pilot" had been filed as small claims cases. The parties agreed to have their disputes submitted to Respondent for decision. Respondent's decision would be binding.

Respondent did appear in the videotaped "pilot" and was referred to as "Judge Kevin Ross". The executives and Respondent had previously agreed, however, that filming would not be done in a courtroom; it would not be done during court hours; and a judicial robe would not be worn.

Pursuant to the Judicial Code of Ethics, Respondent understood that he could not accept any money from the "pilot" project. Respondent denies his personal and pecuniary interests were advanced, and further denies the interests of others were being advanced at the time. It was explained to Respondent that this "pilot" project was in-house to determine whether a consensus could be reached regarding the sustainability of this potential program. Although Respondent was given $5000.00 for his participation in the "pilot" project, all non-tax monies were turned over to the Los Angeles Superior Court's Judicial Resources Office. Respondent was advised that all monies were going to be deposited in the county's general fund along with checks Respondent had submitted from KCET Television for his appearances on the show *Life and Times Tonight*. This information was subsequently reported on Respondent's 2002 Statement of Economic Interest 700 Form, a public disclosure document that judges are required to fill out annually while in office.

Respondent was aware that his continued involvement with the series after the "pilot" would require him to retire from the Los Angeles Superior Court. Respondent was very concerned about the ramifications of such an early retirement because of the

commitment he had made to individuals who elected him to the bench. Respondent shared his concerns with Ms. Haber and Endemol producers. They in turn discussed how Respondent's involvement would give him a platform that could be used in a number of positive ways to advance legal issues and policies to the general public. Since the ultimate decision about the show's viability would not be made for at least six to eight months, Respondent felt there was sufficient time to weigh the pros and cons about this possible career change.

In the contractual agreement that Respondent signed, Endemol producers included a provision in the contract stating that they would have the sole authority to use Respondent's name and title as it pertained to the series itself, but not the "pilot" project. Endemol assured Respondent that before giving any authorization to make his name and title public, Respondent would be advised that they were at a stage where it was absolutely necessary to do so. Assurances were made to Ms. Haber, Attorney Rubentstein and Respondent that the pilot would not be distributed to the general public or be promoted as such using Respondent's name and title without express permission. Although this specific wording is not reflected in the written agreement, Endemol, to Respondent's knowledge, kept their word and did not publicly use Respondent's name or title in their efforts to finalize the outcome of the "pilot" project.

Nevertheless, an entertainment trade paper, *Variety*, reported on August 5, 2002 that numerous syndicated shows were being considered for the following year. *Mobile Court* was among them. Respondent was mentioned by name and title in the periodical. For that, Respondent accepts complete responsibility. The use of Respondent's name and title came from a Tribune Entertainment executive who was interviewed by the reporter working on the story for *Variety*.

Tribune was the entity that agreed to partner with Endemol to develop the "pilot", convinced that they could influence their affiliate-owned stations across the country to air the series during the 2003 - 2004 television season. Although Respondent never had a contractual agreement with Tribune, representatives from

Endemol apologized profusely on Tribune's behalf for not honoring the understanding Respondent had with Endemol. The management of Endemol conveyed sincere remorse over the blunder and indicated that they would ensure that the use of his name and title without permission would not happen again.

From August 2002 until Respondent received official notice that the show was not going forward in March 2003, to Respondent's knowledge, nothing appeared in public about this "pilot" project. Furthermore, the "pilot" was never shown to the public nor was it intended for public viewing.

Respondent did engage in arbitration in both scenarios featured in the "pilot", failing to realize that doing so violated the Code of Judicial Ethics. Respondent is prepared to deal with the consequences of his actions in this regard. Respondent denies any intent to demean the office or lessen the integrity of the judiciary. Featured in professional attire, Respondent simply considered his unpaid appearance to be a one-time theatrical performance in an entertainment production.

Respondent specifically denies that his alleged conduct as to Count Four, violated the Code of Judicial Ethics, canons 1, 2A, 2B(2), 4A(2), and 4D(1)(a), was willful misconduct in office, was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or was improper conduct within the meaning of the California Constitution, Article VI, section 18(d).

FIRST AFFIRMATIVE DEFENSE AS TO COUNT THREE, A, B, C, AND D

Canon 3B(9) states:

"A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* [*Terms with an asterisk (*) are defined in the Terminology section.] similar abstention on the part of court personnel* subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the court of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials, cases and issues pending in appellate courts. This education exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case."

Canon 3B(9) is unconstitutional on its face and as applied to Respondent, and is an unconstitutional abridgement of free speech, contrary to the First Amendment to the United States Constitution, and Article I, section 2, of the California Constitution.

Respectfully submitted,

EDWARD P. GEORGE, JR.
TIMOTHY L. O'REILLY
EDWARD P. GEORGE, JR., INC.

By_____
EDWARD P. GEORGE, JR.
Attorneys for Respondent,
Judge Kevin A. Ross

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I, KEVIN A. ROSS, declare that:

I am the respondent judge in the above-entitled proceeding. I have read the foregoing Answer of Judge Kevin A. Ross to First Amended Notice of Formal Proceedings, and all facts alleged in the above document, not otherwise supported by citations to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 17, 2004, at Long Beach, California.

KEVIN A. ROSS
Judge No. 174

PROOF OF SERVICE

State of California, County of Los Angeles:

I, Kay L. Marcum, declare that: I am and was at all times herein mentioned, a citizen of the United States; employed in the county aforesaid; over the age of 18 years; and not a party to the within action or proceeding. My business address is 5000 East Spring Street, Suite 430, Long Beach, California 90815.

The original **Answer of Judge Kevin A. Ross to First Amended Notice of Formal Proceedings** was served for filing with the Commission on Judicial Performance on September 18, 2004, by placing the original Answer in a sealed Federal Express envelope addressed to

Jay Linderman
Legal Advisor to Commissioners
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102

Said envelope was deposited with Federal Express in Long Beach, California, on said date for delivery to the Commission on September 20, 2004.

A copy of the Answer of Judge Kevin A. Ross to First Amended Notice of Formal Proceedings was served on Jack Coyle, Trial Counsel, Commission on Judicial Performance, by placing a true copy thereof, in a sealed Federal Express envelope, and causing said envelope to be deposited with Federal Express in Long Beach, California, on September 18, 2004, addressed as follows:

Jack Coyle, Esq.
Office of Trial Counsel
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 18, 2004, at Long Beach, California.

_____
KAY L. MARCUM